

RULE 9013-3 DEFAULT MOTION PRACTICE

- (a) **Default Notice.** Any motion listed in paragraph (c) of this Rule, if pursued on a default basis, shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

IF YOU INTEND TO OPPOSE THIS MOTION, WRITTEN OPPOSITION MUST BE FILED WITH THE CLERK OF THE COURT AND SERVED ON MOVANT'S COUNSEL AT LEAST SEVEN (7) DAYS PRIOR TO THE RETURN DATE. IF YOU DO NOT FILE AND SERVE WRITTEN OPPOSITION, NO HEARING WILL BE HELD ON THE RETURN DATE AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED.

- (b) **Timely Opposition Not Filed.** If no opposition is timely filed and served upon movant's counsel as outlined in the above notice, the motion will not appear on the Court's motion calendar on the return date, and the motion will be considered by the Court without the necessity of any appearance by movant's counsel.

(1) **Timely Opposition Filed.** If written opposition to the motion is timely filed and served upon movant's counsel, the motion will appear on the Court's motion calendar on the return date and the parties are required to appear.

(2) **Proposed Order.** A proposed order should not be submitted for signature until after the return date of the motion.

- (c) **Default Motions.** The default motion practice outlined in this Rule applies to the following types of motions:

(1) Abandon Property (§ 554(b));

(2) Allow Administrative Expenses Other Than Professional Fees (§ 503(b));

(3) Allow Administrative Expenses for Professional Fees in a chapter 13 case which are not in excess of \$1,000.00, provided however, that said fees are requested for services rendered in connection with a motion brought by default under this Rule;

(4) Approve Settlement of Adversary Proceeding or Contested Matter (Fed. R. Bankr. P. 9019);

- (5) Assume or Reject Executory Contract or Unexpired Lease (§ 365);
- (6) Change Venue (28 U.S.C. § 1412);
- (7) Compel Turnover of Property (§ 542);
- (8) Convert (§§ 706, 1112(a)) or Dismiss Case (§§ 707, 1112(b), 1208, and 1307);
- (9) Disallow or Modify Claim (§ 502);
- (10) Dismiss for Failure to Pay Filing Fee (Fed. R. Bankr. P. 1006(a));
- (11) Extend Time to Assume or Reject an Unexpired Nonresidential Lease (§ 365(d)(4));
- (12) Extend Time to File Complaint (Fed. R. Bankr. P. 4004(b), 4007(c));
- (13) Extend Time to File Plan and Disclosure Statement – Chapter 11 (§ 1121(d));
- (14) Extend Time to File Plan - Chapter 12 and 13 (§§ 1221 and 1321);
- (15) Extend Time to Pay Filing Fee (Fed. R. Bankr. P. 1006(b));
- (16) Conduct Fed. R. Bankr. P. 2004 Exam;
- (17) Object to Claimed Exemption (Fed. R. Bankr. P. 4003(b));
- (18) Obtain Credit (§ 364(b), (c), and (d));
- (19) Modify Chapter 12 or 13 Plan Post-Confirmation (§§ 1229 and 1329);
- (20) Reopen Case (Fed. R. Bankr. P. 5010 and Local Bankruptcy Rule 5010)
- (21) Terminate or Modify the Automatic Stay and/or Co-Debtor Stay, provided, however, that ~~the proposed order includes a provision that any surplus proceeds obtained by the creditor shall be turned over to the chapter 7, 12 or 13 trustee~~ movant shall include in the proposed order granting a motion for relief from the stay a directive that (i) the case trustee be added as a necessary party to receive notice of the report of sale and surplus money proceedings; and (ii) closure of the case shall not constitute an abandonment of the trustee's interest, if any, in any surplus proceeds. (§ 362(d));

- (22) Use Cash Collateral (§ 363(e));
 - (23) Revoke/Reconsider Order of Dismissal (Fed. R. Bankr. P. 9024);
 - (24) Waive Debtor's Appearance at Section 341 Meeting of Creditors;
 - (25) Application to Employ a Professional under § 327(e) in a Chapter 7 Case When the Trustee Seeks to Employ an Attorney to Pursue a Claim of the Estate Previously Held by the Debtor (§ 327(e));
 - (26) Confirm Automatic Stay Has Been Terminated (§ 362(j));
 - (27) Extend the Automatic Stay (§ 362(c)(3)(B));
 - (28) Seal a Document (Fed. R. Bankr. P. 9018); and
 - (29) Avoid Judicial Lien and Non-Possessory, Non-Purchase Money Security Interest (§ 522(f)).
- (d) Rules 9013-1 and 9013-2 also apply to default motion practice.
- (e) The default motion practice only applies to motions listed in paragraph (c) of this Rule. Any other motion shall require the appearance of movant's counsel, regardless of whether written opposition is filed.

Comment

Essential to the Court granting a default motion is proper service of the default motion evidenced by a timely filed certificate of service. In this regard, particular reference is made to Fed. R. Bankr. P. 3007 and 6007 and to the provisions of Fed. R. Bankr. P. 7004(b)(1)-(10), which are applicable to contested matters pursuant to Fed. R. Bankr. P. 9014.

Certain applications to employ a professional in a chapter 7 case are required to be on notice so that the debtor and debtor's counsel are cognizant that any professional retained by the chapter 7 trustee is retained to represent the bankruptcy estate's interest and not the debtor's interest, despite the fact the professional may have represented the debtor prior to the bankruptcy filing. See LBR 2014-1(e).

See also LBR 4001-1 with respect to a motion to lift the automatic stay.

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